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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,622	03/19/2004	Edgar Beaulieu	926359-95541	7848
7590	07/13/2005		EXAMINER	
Gerald S. Geren Lee, Mann, Smith, McWilliams, Sweeney & Ohlson P.O. Box 2786 Chicago, IL 60690-2786			GANAY, STEVEN J	
			ART UNIT	PAPER NUMBER
			3752	
DATE MAILED: 07/13/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/804,622	BEAULIEU, EDGAR
	Examiner Steven J. Ganey	Art Unit 3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 29 April 2005.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 15-57 is/are pending in the application.  
 4a) Of the above claim(s) 15-17 is/are withdrawn from consideration.  
 5) Claim(s) 21-31 is/are allowed.  
 6) Claim(s) 18-20,32,36,38,48-50 and 54-57 is/are rejected.  
 7) Claim(s) 33-35,37,39-47 and 51-53 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 4/29/05.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 15-17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on April 29, 2005.
2. Applicant's election with traverse of claims 18-20 in the reply filed on April 29, 2005 is acknowledged. After further review the examiner has decided to include claims 21-31. An action on claims 18-31 follows

The requirement concerning claims 15-17 is still deemed proper and is therefore made FINAL.

### ***Claim Objections***

3. Claim 18 is objected to because of the following informalities: In line 5, "said stack" should be --said stack formation-- in order to maintain proper antecedent basis. In lines 8 and 9, "the stack coupling formation" should be changed to --the at least one coupling formation-- in order to maintain proper antecedent basis. Appropriate correction is required.

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed.

Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 32, 36, 38, 48, 49, 50 and 54-57 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 8, 10, 12 and 13 of U.S. Patent No. 6,740,232. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both claim a treatment apparatus comprising a module having a passageway having a fluid coupling at one end and an inlet construction at the other end, an arcuate upper portion defining a plurality of openings and flat bottom portion, an elongated vertically disposed stack and a cover. The claims of the instant application are encompassed in the claims of U.S. Patent No. 6,740,232.

#### *Claim Rejections - 35 USC § 102*

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Butler.

Butler shows a water apparatus comprising a hollow cylindrical stack formation 42 with a coupling formation at 12 and an elongated disbursing module 20 with a flat bottom 44 and

arcuate upper portion with apertures 18 with an inlet end for receiving water and at outlet end to engage the coupling formation.

With respect to applicant's statements of intended use, i.e. (for treating pond water and constructed to be positioned in a wetlands zone, the device of Butler is capable of performing applicant's intended use, therefore, the claims are fully anticipated.

8. Claim 18 is rejected under 35 U.S.C. 102(b) as being anticipated by Roberts.

Roberts shows a water apparatus comprising a hollow cylindrical stack formation 40 with a coupling formation, see Fig. 2 and an elongated disbursing module 28 with an arcuate upper portion with apertures 36 with an inlet end for receiving water and at outlet end to engage the coupling formation, see Fig. 2.

With respect to applicant's statements of intended use, i.e. (for treating pond water and constructed to be positioned in a wetlands zone, the device of Butler is capable of performing applicant's intended use, therefore, the claims are fully anticipated.

#### *Claim Rejections - 35 USC § 103*

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Butler.

Butler discloses all the featured elements of the instant invention except for the module being larger than the inlet end. It would have been obvious to one having ordinary skill in the art

at the time the invention was made to make the module larger than the inlet end since such a modification would control the flow of water from the module where a large module would provide water at a lower pressure to provide a trickle type discharge or the size as disclosed which provides water at a higher pressure to provide more of a spray discharge.

*Allowable Subject Matter*

11. Claims 21-31 are allowed.
12. Claims 33-35, 37, 39-47 and 51-53 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven J. Ganey whose telephone number is (571) 272-4899. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel, can be reached on (571) 272-4919. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.

sjg

7/11/05

  
**STEVEN J. GANEY**  
**PRIMARY EXAMINER**

7/11/05